UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF NEW YORK

IN RE:

BARBARA J. DENSLOW — CASE NO. 00-64503

Debtor — Chapter 13

APPEARANCES:

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Hon. Stephen D. Gerling, Chief U.S. Bankruptcy Judge

MEMORANDUM-DECISION, FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Pursuant to its Memorandum-Decision, Findings of Fact, Conclusions of Law and Order, dated February 18, 2004 ("February Decision"), the Court ordered that an evidentiary hearing pursuant to § 506(a) of the Bankruptcy Code, 11 U.S.C. §§ 101-1330 ("Code"), be scheduled "at which time the Debtor [Barbara J. Denslow] will have the burden to present proof that Associates [Financial Services Company's] deficiency claim, as asserted in its proof of claim, based on the judgment entered in State Court on August 2, 2000, was unsecured insofar as Debtor's assets

were concerned at the time the Petition was filed." February Decision at 12.

The evidentiary hearing was originally scheduled to be held in Utica, New York, on April 1, 2004. However, the hearing was adjourned indefinitely as a result of the appeal of the February Decision filed by the Debtor on or about February 27, 2004. In a letter, dated July 2, 2004, addressed to the Honorable David N. Hurd, U.S. District Court for the Northern District of New York, Debtor's counsel indicated that the Debtor wished to withdraw her appeal. The Debtor's request was "So Ordered" by Judge Hurd on July 6, 2004 (Case Docket No.38). Accordingly, the Court rescheduled the evidentiary hearing for October 13, 2004.

On October 13, 2004, the Court heard testimony only from the Debtor. At the close of her testimony, the Court afforded both parties the opportunity to file memoranda of law. The matter was submitted for decision on November 10, 2004.

JURISDICTIONAL STATEMENT

The Court has core jurisdiction over the parties and subject matter of this contested matter pursuant to 28 U.S.C. §§ 1334(b), 157(a), 157(b)(1) and (b)(2)(A), (B), (K) and (O).

FACTS

The Court will assume familiarity with the background facts of this case as set forth in its February Decision. At the hearing, the Debtor testified that she resided at 1192 County Route 11, West Monroe, New York (the "Premises"). It was her testimony that she, along with her son

and his girlfriend, resided at the Premises in a single wide mobile home.[1]

According to the Debtor, the mobile home had been moved to the Premises and placed on cinder blocks. The Debtor testified that the mobile home had connections to electricity, water and septic but it had no permanent foundation. It was the Debtor's testimony that on October 11, 1995, she and her former husband had entered into a land contract ("Land Contract") with Michael Tanner ("Tanner") for the ultimate purchase of the Premises, consisting of 6.49 acres in Oswego County. *See* Debtor's Exhibit 1.

Under the terms of the Land Contract, Debtor paid Tanner $3,000 as a downpayment on the original purchase price of $18,000. She testified that her monthly payments are $161.20, payable over 15 years at 10% interest, beginning November 1, 1995. *See id.* She also pays Tanner $125 per month for taxes on the Premises. Debtor denied owning any other real property in Oswego County or in New York State.

At the time that the Debtor filed her Petition, she owned a 1995 Eagle Vision with 130,000 miles, valued at $2,500, and a 1990 Chevrolet Lumina with 183,000 miles, valued at $400. *See* Debtor's Exhibit 2.[2] The Debtor claimed her residence, valued at $20,000, as exempt. She also claimed an exemption in the Chevrolet Lumina. *See id.* at Schedule C.

In her Petition, the Debtor listed Chrysler Financial Corporation as holding a security interest in the 1995 Eagle Vision with a claim of $9,074.25. *See id.* at Schedule D. She also identified Key Bank of New York as holding a purchase money security interest in the mobile

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[1] According to the Debtor's Petition, filed on September 12, 2000, the Debtor owned a 1988 Holly Park Mobile Home with an estimated value at the time of $18,000.

[2] At the hearing, the Court agreed to take judicial notice of the Petition, offered by the Debtor into evidence, on file with the Court.

home in the amount of $18,840. *Id.*

In her schedules, the Debtor listed a claim held by Tanner in the amount of $19,320, despite having testified that the principal amount owed to him at the time the Land Contract was executed was $15,000 and despite having testified that she had timely made all payments to him up until the last two months preceding the evidentiary hearing. Associates was listed as an unsecured creditor with a claim of $6,541 with respect to a 1996 Dodge Intrepid, which allegedly had been repossessed in March 2000.[3] *Id.* at Schedule F. According to her Petition, Associates had obtained a pre-Petition Judgment/Income Execution on her wages for the deficiency balance owing on the Intrepid.

DISCUSSION

Associates filed a proof of claim on December 28, 2000, in the amount of $6,282.86, as secured based on its judgment in State Court of $5,669.86. *See* February Decision at 3. The Debtor failed to timely object to the proof of claim, and the chapter 13 trustee commenced making payments to Associates in May 2001. *See id.* at 4. As of August 19, 2003, Associates had been paid $3,187.81 by the trustee. *Id.* at 5. In the February Decision, the Court declined to require that Associates disgorge those monies based on the Debtor's assertion that Associates' claim was unsecured as of the Petition date. The issue before this Court is whether Associates is entitled to receive any additional monies based on its assertion that as of the Petition date it

[3] The Court signed an Order confirming the Debtor's plan on January 24, 2001, which provides for a dividend to unsecured creditors of no less than ten percent on their claims.

held a secured claim against the Premises by virtue of its judgment obtained prepetition. *See* Wherefore clause in the Affidavit of Richard Spatari, Esq., dated November 10, 2004.[4]

In determining the extent of Associates' lien, the critical date is September 12, 2000. As noted above, the Debtor placed a value on the Premises as of September 12, 2000, at $20,000. The Court agrees with Associates' counsel that the amount of Tanner's claim, as listed in the Petition, of $19,320 makes no sense given the fact that the initial debt, as set forth in the Land Contract, was $15,000. Furthermore, the Debtor testified that she has made all payments due to Tanner except for the last two. As Associates' counsel points out, the Land Contract provides that the monthly payments were to be "applied first to accrued interest and then to reduce the principal balance due and owing herein." *See* Debtor's Exhibit 1 at ¶ 3(a).

The Court has calculated the amount of principal that would have been paid by the Debtor under the terms of the Land Contract between November 1, 1995, the date on which the first payment was due, and September 1, 2000, the last date on which a payment was due prepetition. Using a principal amount of $15,000, payable over 15 years at an interest rate of 10% and monthly payments of $161.19, the Court calculates that the Debtor paid a total of $2,744 over those 59 months.[5] Subtracting that amount from the beginning principal amount of $15,000, leaves a balance of $12,256 due as of the date of the Petition. Given the Debtor's estimated value

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[4] It does not appear that Associates is asserting that its lien extends to any personal property owned by the Debtor at the time she filed her Petition. Indeed, according to the Debtor's Petition, most of the personal property with any value was fully encumbered, including the mobile home and the Chevrolet Lumina.

[5] According to the Land Contract, the actual monthly payments were $161.20. Using an amortization calculator (*see* www.bankrate.com) the actual total amount allocated to principal was $2,743.43. The Court has simply rounded that figure up, taking into consideration that an additional fifty-nine cents was made by the Debtor by paying $161.20 per month.

of the Premises of $20,000, and subtracting the $12,256 still due on the Land Contract, leaves equity of $7,744. *See Cardinal v. U.S.*, 36 F.3d 48, 49 (6th Cir. 1994) (indicating that "the value of the equity interest [in a land contract] depends on the fair market value of the real property and is measured by reducing the fair market value of the property by the amount due on the land contract"). Because Associates' claim at the time the Debtor filed her petition was based on a prepetition judgment obtained in State Court,[6] rather than being based on a consensual lien, the Debtor was entitled to a homestead exemption of $10,000. Therefore, the Court concludes that Associates' claim was unsecured as of the Petition date. The Debtor's plan provided for a dividend of no less than ten percent on unsecured claims. This would have entitled Associates to the payment of $628.29 on its unsecured claim over the term of the Debtor's plan. As of August 19, 2003, Associates had received $3,187.81 in payments from the Trustee. Accordingly, it is not entitled to any further payments.

Based on the above, it is hereby

ORDERED that Associates claim, as of September 12, 2000 was unsecured; and it is further

ORDERED that the chapter 13 trustee make no further payments to Associates on its claim, having paid Associates $3,187.81.

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[6] Section 282(i) of the New York Debtor and Creditor Law allows a debtor in bankruptcy to exempt from property of the estate real property with a dwelling thereon owned and occupied as the debtor's principal residence as exempt from application **to the satisfaction of money judgments** under § 5206(a)(1) of the New York Civil Practice Law and Rules.

Dated at Utica, New York

this 6th day of January 2005

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STEPHEN D. GERLING
Chief U.S. Bankruptcy Judge